

108TH CONGRESS  
1ST SESSION

# S. 1972

To amend the Internal Revenue Code of 1986 to provide for a tax credit for small employer-based health insurance coverage in States in which such coverage is mandated, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 25, 2003

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for a tax credit for small employer-based health insurance coverage in States in which such coverage is mandated, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business State  
5 Mandated Health Insurance Assistance Act of 2003”.

1 **SEC. 2. CREDIT FOR EMPLOYEE HEALTH INSURANCE EX-**  
 2 **PENSES RELATED TO STATE MANDATES.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 of the Internal Revenue Code of  
 5 1986 (relating to business-related credits) is amended by  
 6 adding at the end the following:

7 **“SEC. 45G. EMPLOYEE HEALTH INSURANCE EXPENSES RE-**  
 8 **LATED TO STATE MANDATES.**

9 “(a) GENERAL RULE.—For purposes of section 38,  
 10 in the case of a qualified small employer, the employee  
 11 health insurance expenses credit determined under this  
 12 section is an amount equal to 50 percent of the amount  
 13 paid by the taxpayer during the taxable year for qualified  
 14 employee health insurance expenses.

15 “(b) PER EMPLOYEE DOLLAR LIMITATION.—The  
 16 amount of qualified employee health insurance expenses  
 17 taken into account under subsection (a) with respect to  
 18 any qualified employee for any taxable year shall not ex-  
 19 ceed the maximum employer contribution for self-only cov-  
 20 erage or family coverage (as applicable) determined under  
 21 section 8906(a) of title 5, United States Code, for the cal-  
 22 endar year in which such taxable year begins.

23 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
 24 poses of this section—

25 “(1) QUALIFIED SMALL EMPLOYER.—

1           “(A) IN GENERAL.—The term ‘qualified  
2           small employer’ means any small employer  
3           which—

4                   “(i) provides eligibility for health in-  
5                   surance coverage (after any waiting period  
6                   (as defined in section 9801(b)(4))) to all  
7                   qualified employees of the employer, and

8                   “(ii) operates in a State in which the  
9                   employer must provide such eligibility  
10                  under State law.

11          “(C) SMALL EMPLOYER.—

12                   “(i) IN GENERAL.—For purposes of  
13                   this paragraph, the term ‘small employer’  
14                   means, with respect to any calendar year,  
15                   any employer if such employer employed  
16                   an average of not less than 2 and not more  
17                   than 500 qualified employees on business  
18                   days during either of the 2 preceding cal-  
19                   endar years. For purposes of the preceding  
20                   sentence, a preceding calendar year may be  
21                   taken into account only if the employer  
22                   was in existence throughout such year.

23                   “(ii) EMPLOYERS NOT IN EXISTENCE  
24                   IN PRECEDING YEAR.—In the case of an  
25                   employer which was not in existence

1 throughout the 1st preceding calendar  
 2 year, the determination under clause (i)  
 3 shall be based on the average number of  
 4 qualified employees that it is reasonably  
 5 expected such employer will employ on  
 6 business days in the current calendar year.

7 “(2) QUALIFIED EMPLOYEE HEALTH INSUR-  
 8 ANCE EXPENSES.—

9 “(A) IN GENERAL.—The term ‘qualified  
 10 employee health insurance expenses’ means any  
 11 amount paid by an employer for health insur-  
 12 ance coverage to the extent such amount is at-  
 13 tributable to coverage provided to any employee  
 14 while such employee is a qualified employee.

15 “(B) EXCEPTION FOR AMOUNTS PAID  
 16 UNDER SALARY REDUCTION ARRANGEMENTS.—  
 17 No amount paid or incurred for health insur-  
 18 ance coverage pursuant to a salary reduction  
 19 arrangement shall be taken into account under  
 20 subparagraph (A).

21 “(C) HEALTH INSURANCE COVERAGE.—  
 22 The term ‘health insurance coverage’ has the  
 23 meaning given such term by paragraph (1) of  
 24 section 9832(b) (determined by disregarding

1 the last sentence of paragraph (2) of such sec-  
 2 tion).

3 “(3) QUALIFIED EMPLOYEE.—The term ‘quali-  
 4 fied employee’ means an employee of an employer  
 5 who, with respect to any period, provides services to  
 6 such employer in a State described in paragraph  
 7 (1)(A)(ii) and is not provided health insurance cov-  
 8 erage under—

9 “(A) a health plan of the employee’s  
 10 spouse,

11 “(B) title XVIII, XIX, or XXI of the So-  
 12 cial Security Act,

13 “(C) chapter 17 of title 38, United States  
 14 Code,

15 “(D) chapter 55 of title 10, United States  
 16 Code,

17 “(E) chapter 89 of title 5, United States  
 18 Code, or

19 “(F) any other provision of law.

20 “(4) EMPLOYEE.—The term ‘employee’—

21 “(A) means any individual, with respect to  
 22 any calendar year, who is reasonably expected  
 23 to receive at least \$5,000 of compensation from  
 24 the employer during such year,

1 “(B) does not include an employee within  
2 the meaning of section 401(c)(1), and

3 “(C) includes a leased employee within the  
4 meaning of section 414(n).

5 “(5) COMPENSATION.—The term ‘compensa-  
6 tion’ means amounts described in section  
7 6051(a)(3).

8 “(d) CERTAIN RULES MADE APPLICABLE.—For pur-  
9 poses of this section, rules similar to the rules of section  
10 52 shall apply.

11 “(e) DENIAL OF DOUBLE BENEFIT.—No deduction  
12 or credit under any other provision of this chapter shall  
13 be allowed with respect to qualified employee health insur-  
14 ance expenses taken into account under subsection (a).”.

15 (b) CREDIT TO BE PART OF GENERAL BUSINESS  
16 CREDIT.—Section 38(b) of the Internal Revenue Code of  
17 1986 (relating to current year business credit) is amended  
18 by striking “plus” at the end of paragraph (14), by strik-  
19 ing the period at the end of paragraph (15) and inserting  
20 “, plus”, and by adding at the end the following:

21 “(16) the employee health insurance expenses  
22 credit determined under section 45G.”.

23 (c) CREDIT ALLOWED AGAINST MINIMUM TAX.—

24 (1) IN GENERAL.—Subsection (c) of section 38  
25 of the Internal Revenue Code of 1986 (relating to

1 limitation based on amount of tax) is amended by  
 2 redesignating paragraph (4) as paragraph (5) and  
 3 by inserting after paragraph (3) the following new  
 4 paragraph:

5 “(4) SPECIAL RULES FOR EMPLOYEE HEALTH  
 6 INSURANCE CREDIT.—

7 “(A) IN GENERAL.—In the case of the em-  
 8 ployee health insurance credit—

9 “(i) this section and section 39 shall  
 10 be applied separately with respect to the  
 11 credit, and

12 “(ii) in applying paragraph (1) to the  
 13 credit—

14 “(I) the amounts in subpara-  
 15 graphs (A) and (B) thereof shall be  
 16 treated as being zero, and

17 “(II) the limitation under para-  
 18 graph (1) (as modified by subclause  
 19 (I)) shall be reduced by the credit al-  
 20 lowed under subsection (a) for the  
 21 taxable year (other than the employee  
 22 health insurance credit).

23 “(B) EMPLOYEE HEALTH INSURANCE  
 24 CREDIT.—For purposes of this subsection, the  
 25 term ‘employee health insurance credit’ means

1           the credit allowable under subsection (a) by rea-  
2           son of section 45G(a).”.

3           (2) CONFORMING AMENDMENTS.—Subclause  
4           (II) of section 38(c)(2)(A)(ii) and subclause (II) of  
5           section 38(c)(3)(A)(ii) are each amended by insert-  
6           ing “or the employee health insurance credit” after  
7           “employee credit”.

8           (d) NO CARRYBACKS.—Subsection (d) of section 39  
9           of the Internal Revenue Code of 1986 (relating to  
10          carryback and carryforward of unused credits) is amended  
11          by adding at the end the following:

12                 “(11) NO CARRYBACK OF SECTION 45G CREDIT  
13                 BEFORE EFFECTIVE DATE.—No portion of the un-  
14                 used business credit for any taxable year which is  
15                 attributable to the employee health insurance ex-  
16                 penses credit determined under section 45G may be  
17                 carried back to a taxable year ending before the date  
18                 of the enactment of section 45G.”.

19           (e) CLERICAL AMENDMENT.—The table of sections  
20          for subpart D of part IV of subchapter A of chapter 1  
21          of the Internal Revenue Code of 1986 is amended by add-  
22          ing at the end the following:

“Sec. 45G. Employee health insurance expenses related to State  
mandates.”.

23           (f) EMPLOYER OUTREACH.—The Internal Revenue  
24          Service shall, in conjunction with the Small Business Ad-



1 ministration, develop materials and implement an edu-  
2 cational program to ensure that business personnel are  
3 aware of—

4           (1) the eligibility criteria for the tax credit pro-  
5 vided under section 45G of the Internal Revenue  
6 Code of 1986 (as added by this section),

7           (2) the methods to be used in calculating such  
8 credit, and

9           (3) the documentation needed in order to claim  
10 such credit,

11 so that the maximum number of eligible businesses may  
12 claim the tax credit.

13       (g) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to amounts paid or incurred in tax-  
15 able years beginning after the date of the enactment of  
16 this Act.

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